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Third to fifth periodic reports of States parties due in 2013

Malawi*

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Introduction

1. This report was compiled by a Task Force led by the Ministry responsible for Children. The Task Force comprised of all key stakeholders, such as Ministries, departments and civil society organizations. For details on the country profile, historical background, constitutional framework reference is made to Malawi's common core document.

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

2. The Convention on the Rights of the Child (CRC) defines a child as a person who is below the age of 18 years. In the Constitution, there is no broad definition of a child. The provision where a child is defined remains section 23, where a child is defined only for purposes of that section. Section 23 provides as follows:

> "(1) All children, regardless of the circumstances of their birth, are entitled to equal treatment before the law, and the best interests and welfare of children shall be a primary consideration in all decisions affecting them.
>
> (2) All children shall have the right to a given name and a family name and the right to a nationality.
>
> (3) Children have the right to know, and to be raised by, their parents.
>
> (4) All children shall be entitled to reasonable maintenance from their parents, whether such parents are married, unmarried or divorced, and from their guardians; and, in addition, all children, and particularly orphans, children with disabilities and other children in situations of disadvantage shall be entitled to live in safety and security and, where appropriate, to State assistance.
>
> (5) Children are entitled to be protected from economic exploitation or any treatment, work or punishment that is, or is likely to—
>
> (a) be hazardous;
>
> (b) interfere with their education; or
>
> (c) be harmful to their health or to their physical, mental or spiritual or social development.
>
> (6) For purposes of this section, children shall be persons under the age of sixteen years."

3. It must be noted that section 23 of the Constitution falls within the Scheduled provisions of the Constitution which need a more rigorous process for amendment. The current wording of this section is as a result of amendments made to the Constitution in 2010 through a technical review of the Constitution initiated by the Law Commission. To the extent that a child has been defined as a person under the age of sixteen years for the specific purposes of this section, it may be argued that at constitutional level, there is variance with the CRC. This variance may only be addressed through a referendum.

4. A number of law reform processes have sought to propose the age of a child in line with the CRC. The major reform programme on child rights concluded in 2006 and its recommendations were enacted under the Child Care, Protection and Justice Act (CCPJ)

(Act No. 22 of 2010). The CCPJA similarly provides that the age of a child is below 16 years. This is despite the fact that the report of the Law Commission which originated the legislation proposed a definition of a child in line with the CRC.

5. The Law Commission also reviewed the Penal Code and produced its findings in 2000. The Commission recommended that the age of criminal responsibility should be raised from 7 years to 10 years. The proposal was considered by the National Assembly and enacted into law in 2010.

6. There are several legislative and non-legislative regimes governing marriage in Malawi. The Constitution remains unclear on the precise minimum age of marriage. The 2010 Constitution amendment to section 22(8) brought light to this unsettled matter by providing that the State shall "actively" discourage marriage between persons where either of the persons is under the age of 15 years. Previously, the Constitution used the word "actually". While this proposal is commendable and justifies State action in this regard, it still falls short of an outright prohibition. Under the Constitution, it still remains legal to enter into marriage at the attainment of the age between 15 and 18 years as long as consent of parents or guardians is obtained.

7. The Marriage, Divorce and Family Relations Bill raises the minimum age for marriage to 18 years. This recommendation is likely to create a conflict between a marriage that is constitutionally compliant (because one or both parties are above the age of 15 years) and a law that nullifies that marriage as illegal.

8. Already under the current provisions of the Constitution, it is anomalous that a person who is capable of contracting a marriage under section 22 of the Constitution is defined as a child under section 23. A proposal to rectify this anomaly was defeated in 2010 when the President refused to assent into law the provision which raised the age of marriage from 15 years to 16 years under section 22.

9. The Penal Code through an amendment made in 2010, complements the provisions of section 23 of the Constitution by raising the age of sexual debut from 13 years to 16 years. Any person having carnal knowledge of a girl below the age of 16 years commits the offence of "defilement" and is liable to life imprisonment. Technically, this means that there is need for an exemption under section 22 of the Constitution prohibiting prosecution of a person who has sexual intercourse with a wife of 15 years who under the Penal Code cannot consent to sexual intercourse.

10. The Employment Act regulates employment of young persons and expressly prohibits employment of persons under the age of 14 years in any public or private agricultural, industrial or non-industrial undertaking or any branch thereof. This prohibition does not apply to domestic chores or vocational and training institutions provided that the work in vocational or training institutions is approved and supervised by a public authority; and is an integral part of the educational or vocational training programme.

11. The Employment Act also prohibits a person between the age of 14 and 18 years from undertaking hazardous work. Hazardous work has been defined as an occupation or activity that is likely to be harmful to health, safety, education, morals or development of such a person; or prejudicial to the attendance at school or other training programme. Every employer of a person below the age of 18 years bound by law to keep a register of such employees.

12. A person contravening the prohibition regarding employment of young persons may be punished by a fine of K100,000 and imprisonment for 5 years.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

13. The main prohibition of discrimination in the Constitution is provided for under section 20. Section 20 has listed a number of grounds under which discrimination is prohibited including "race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, disability, property, birth or other status or condition". More importantly, section 20 (2) provides for enactment of legislation that addresses inequalities in society and prohibits discriminatory practices and the propagation of such practices. It also provides that such practices may render such practices criminally punishable.

14. With respect to children, the Constitution in section 23 provides that all children are entitled to equal treatment before the law regardless of the circumstances of their birth.

15. In order to ensure that other legislation conforms to the constitutional provision against discrimination, the Child Care, Protection and Justice Act provides for, as a duty and responsibility by the parents or guardians, protection from discrimination. Several other legislation also provides for prohibitions against discrimination. Already enacted are the Disability Act and the Gender Equality Act.

16. The Gender Equality Act prohibits the practice of what have been termed harmful practices on account of gender, sex or marital status. The practices may be customary, traditional, religious or social in nature. The Gender Equality Act also prohibits sex discrimination and sexual harassment. Contravention of the provisions making these prohibitions is punishable by criminal sanctions.

17. The Trafficking in persons Bill is based on the United Nations Convention against Transnational Organized Crime whose Protocol on preventing and suppressing trafficking in persons, specially identifies women and children. In the proposed Bill, children are persons under the age of 18 years. This Bill is before Cabinet.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards

established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

18. In 2010, significant legislatives reforms were adopted. The first was a substantive amendment to section 23 of the Constitution. The second was the enactment of the Child Care, Protection and Justice Act. The reforms heralded a new era in child protection by introducing the principle of the best interests of the child. In the Child Care, Protection and Justice Act, the principle was given legislative effect. In the language of the Constitution in section 23, "the best interests and welfare of children shall be the primary consideration in all decisions affecting [children]".

19. The Child Care, Protection and Justice Act has given examples of instances, when the principle may be invoked in favour of children. One example is when a Child Justice Court considers making an order of custody or access to a child.

20. The principle found its place in Malawian jurisprudence prior to 2010 when the famous case of adoption of Chifundo James went as far as the Supreme Court of Appeal. On 3rd April, 2009, the High Court rejected an application for the adoption of the infant CJ. In declining the application, the court had recourse to Article 3 (1) of the CRC and qualified the principle on the understanding that inter-country adoption is a remedy of last resort.

21. When the matter went to the appellate court, the Supreme Court read the principle differently. In their judgment, pronounced on 12th June, 2009, the Justices of Appeal allowed the Petitioner's appeal and granted the adoption order. The bone of contention in the case was whether the principle was applicable in Malawi since it did not have constitutional or legislative effect at the time. The Supreme Court found that as a signatory to the CRC, the principle had local application and stated as follows:

> "In our Judgment, we think that whether you talk about the best interest of the child as is the case in the above cited Conventions or you talk about the welfare of the child as is contained in the Act, this really is a question of semantics or nomenclature. They mean the same thing, and it is this; a court of law dealing with the adoption of an infant must pay attention at all times that the welfare of the child is not compromised by secondary issues. We therefore find that there is absolutely no conflict between what the Act provides and what Articles 3, 20 and 21 of the CRC provide. The provisions deal at some length with matters that can only be said to be for the welfare of the child which our courts are mandated to protect under the Act."

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

22. The consideration of available resources often comes into play with respect to economic, social and cultural rights unlike for civil and political rights. Section 13 (h) of the Constitution provides that the State shall actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation that aims at encouraging and promoting conditions conducive to the full development of healthy, productive and responsible members of society. Section 23 (4) of the Constitution provides as follows:-

"All children shall be entitled to reasonable maintenance from their parents, whether such parents are married, unmarried or divorced, and from their guardians; and in addition, all children, particularly orphans, children with disabilities and other children in situations of disadvantage shall live in safety and security and, where appropriate, State assistance."

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

23. The Child Care, Protection and Justice Act provides for Child Care and Protection by the family by creating specific duties and responsibilities for parents and guardians:

1) Not to deprive a child of his or her welfare whether imposed by law or otherwise, towards the child which include the responsibility to:

(a) Protect the child from neglect, discrimination, violence, abuse, exploitation, oppression and exposure to physical, mental, social and moral hazards;

(b) Provide proper guidance, care, assistance and maintenance for the child to ensure his or her survival and development, including in particular adequate diet, clothing, shelter and medical attention;

(c) Ensure that during the temporary absence of the parent or guardian, the child shall be cared for by a competent person; and

(d) Exercise joint primary responsibility for raising their children.

24. The above responsibilities may not be exercised where the parent or guardian has forfeited or surrendered his or her rights and responsibilities in accordance with the law. The Child Care, Protection and Justice Act has, among other things, repealed the Affiliation Act while the proposed Marriage, Divorce and Family Relations Bill shall repeal the Divorce Act, amongst other laws. The Act and the Bill provide for child maintenance. Recovering child maintenance through the courts occurs mainly in urban settings and remains a challenge in rural settings where poverty is highest. Efforts to increase access to justice in the rural areas have been scaled up with the introduction of the revised Legal Aid Act enacted in 2011 which has extended the ambit of legal aid services and also the pool of legal aid providers.

Article 6

1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

25. Life and development are recognized as specific rights under the Constitution. The Constitution especially isolates women, children and people with disability as entitled to special consideration in the application of the right to development. The Constitution emphasizes that the right to development shall only be realised where there is equality of

opportunity for all in accessing basic resources, education, health services, food, shelter, employment and infrastructure. The right to life is granted indiscriminately.

26. In order to entrench the right to survival and the right to development for the child, the Constitution makes it a mandatory requirement for a child to know and be raised by parents. Survival and development may also be attained by accessing maintenance regardless of the circumstances of the child's parents.

27. Early childhood mortality rates for the five years immediately preceding the survey (2005-2010), the infant mortality rate is 66 deaths per 1,000 live births. The estimate of child mortality (age 12 months to 4 years) is 50 deaths per 1,000 live births, while the overall under-5 mortality rate for the same period is 112 deaths per 1,000 live births. The neonatal mortality rate is 31 deaths per 1,000 live births. The post-neonatal mortality rate is 35 deaths per 1,000 live births. An examination of mortality levels across the three successive five-year periods shows that under-5 mortality rates have declined from 180 deaths per 1,000 live births during the late 1900s (circa 1995-2000) to 112 deaths per 1,000 live births in the late part of this decade (2005-2010). Most of the decrease in mortality occurred outside of the neonatal and post-neonatal periods. Infant mortality decreased from 92 deaths per 1,000 live births to 66 deaths per 1,000 live births in the same period.

28. The CCPJA provides for care within the family environment and under alternative care. In line with the constitutional requirement for provision for children under what may broadly be described as special circumstances and the constitutional prohibition of any form of exploitation that may affect a child's development, the CCPJA provides for care within the family; children in need of care and protection; guardianship; fosterage; support for children by local authorities; and protection of children from undesirable practices.

29. The CCPJA also provides for measures of dealing with children in conflict with the law to foster their development. The measures include modes of bringing a child before a court or other inquiry, including pronouncing a finding against a child, non-effect of a finding against a child, mode of and guidelines on arresting a child; detention before a finding is made; preliminary inquiry; and diversion. The law also provides for Reformatory Centres and Safety Homes.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and. as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

30. The oldest statute regulating registration of birth is the Births and Deaths Registration Act of 1904. For every child born after the commencement of the Act, registration of that child's birth was compulsory within 3 months of the birth of the child. This was completed by means of completing a Birth Report. The duty to register birth fell on the father, mother, or in default, the occupier of the house in which to his or her knowledge, the child is born or each person present at birth and of the person having charge of the child. In case of an illegitimate child, a person was not bound to be registered as a father of an illegitimate child except at his own request and upon acknowledging himself to be the father of the child and signing the Birth Report.

31. The Births and Deaths Registration Act was repealed by the National Registration Act (NRA) of 2010. The NRA mandates the Government to establish a National Registration System that records births, deaths and marriages. The marriages could be at village, traditional authority, district or national levels. The Register is expected to contain such data as sex, date of birth, parent's names and marital status. Registration is for every person who is 16 years of age or older and is a citizen, permanent resident, holds a temporary permit or a business residence permit. The NRA requires a father or mother to register a birth within 6 weeks. If a child is born out of wedlock, the father is not required to register the birth or to be registered as the child's parent unless he voluntarily assents and the mother agrees or his fatherhood has been proved in court.

32. In the absence of the parents, the head of the household in which the child is born, anyone present at the time the child is born or anyone in charge of the child is bound to register the birth. The NRA also makes provision for a Register of Adopted Children in which an order of adoption is recorded. Those registering a birth after 6 weeks will incur a fine. Failure to register a birth attracts a fine of up to K1,000,000 and 5 years imprisonment. Providing false information or illegally using someone else's identity is an offence that is similarly punished. The NRA compliments the Constitution which provides that all children have the right to a given name and a family name and the right to a nationality. Under the same provision, children also have the right to know and to be raised by their parents.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the

provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

33. The CCPJA makes clear provision for child care by the family. The CCPJA and the Prevention of Domestic Violence Act(PDVA) have also made provision for circumstances under which parental and familial care may be interrupted. The CCPJA has provided for criteria for determining whether a child needs care and protection and placement of a child into a place of safety. The criteria include substantial risk of harm by people including parents or guardians. Unfitness, absence or abandonment of a parent also suffices for alternative care of a child.

34. The criteria listed under section 23 of the CCPJA also tallies with the grounds on which a finding of domestic violence may be made under the PDVA. Under the PDVA, an application fo. an order may be made by a parent or guardian of the child or dependant, or a person with whom the child or dependant ordinarily or periodically resides, where domestic violence involves a child or dependant; a parent or sibling, by blood or marriage of the applicant or respondent, not being a member of the household; a police officer; an enforcement officer; or a service provider approved by the Minister by order published in the Gazette. The CCPJA empowers a police officer, social welfare officer, a chief or any other member of the community to take the child in need of care and protection and place that child in his or her temporary custody or a place of safety. Any child taken into a place of safety shall be brought before a Child Justice Court within 48 hours.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

35. The issue of family reunification as stipulated under this Article is a matter of immigration in Malawi. The Immigration Act provides the legal framework for entry into the country as well as residence. This framework is in line with prevailing practice in international law.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

36. The Penal Code is currently the principle legislation regulating matters of child movement and crimes related to it. The Penal Code provides for offences regarding kidnapping and abduction. Children have received specific protection under the Penal Code regarding these practices.

37. Illicit transfer of children may be defined under the CCPJA if it ends up in exploitation of the child in question. The protection offered under the CCPJA is enhanced by constitutional protection offered under the right to personal liberty; the right to dignity and prohibition of cruel, inhuman and degrading treatment or torture; prohibition of discrimination; protection of children against economic exploitation; or any treatment, work or punishment that is hazardous or harmful to their health; their physical, mental or spiritual development or that may interfere with their education; protection of women against any form of sexual harassment, abuse and violence; and prohibition of slavery and servitude, forced, tied or bonded labour.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

38. The CCPJA provides that when making an order for custody or access of a child, the Child Justice Court shall consider the views of the child. When making arrangements for fosterage, a report made in the course of the arrangements shall also include the views and feelings of the child concerning placement and where there are any problems. There is no specification that the views and feelings shall be taken into consideration beyond this provision.

39. Neither the Constitution nor the CCPJA provide explicitly for freedom of expression of children. The provision for freedom of expression is made in general terms for all persons under the Constitution where it is provided that "Every **person** shall have the right

to freedom of expression". It remains unclear whether this provision is not sufficient to cover children when it comes to enjoyment of this right.

40. The limitation prescribed under this Article are broadly covered by legislation and case law regarding protection of other people's reputation and national security, public order, public health or morals. These restrictions must be understood in light of the provisions regarding criminal responsibility which place the minimum age of criminal responsibility at 10 years.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

41. There is general consensus that the rights captured under these Articles are sufficiently covered by the broad provisions of the Constitution. The Commission that developed the CCPJA indicates that upon consideration of the provisions of the Constitution, the Commission was convinced that there was no need for specific legislation covering what had already and sufficiently been covered.

42. The emerging challenge regarding the rights have arisen with respect to the potential and actual conflict between religion and public health regarding the refusal of some parents to have children vaccinated or treated medically on account of religious beliefs.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

43. Abuse and neglect takes many forms. The most illustrative forms are listed under the PDVA as physical abuse; economic abuse; sexual abuse; psychological abuse; verbal abuse; and financial abuse. Media reports indicate increasing trends for most of the forms of abuse. The soaring numbers of child-headed households also indicates largely increased incidence of neglect. There are other causes of neglect like orphanhood but it has been noted that some children are abandoned by living parents.

44. The PDVA further incorporates penalties for domestic violence. However, the key legislation on prevention of violence remains the Penal Code. The Code prohibits sexual violence as well as defilement of or persons below the age of 16 years.

45. Abuse and neglect are a cause and result of poverty. It has been observed that human trafficking has benefitted from this cycle and many children and women have fallen victim to it. The CCJPA has criminalized some undesirable practices including child trafficking which is punishable by life imprisonment. A more comprehensive legislation has been proposed by the Law Commission in its report on Trafficking in persons in order to prevent trafficking in persons in all aspects. The proposed legislation prescribes trafficking in persons and children and aggravated forms of trafficking; it provides for care and protection of victims including provision of shelter, introduction of a witness protection programme and general care and protection; it also provides for specialized forms of investigations and conducting proceedings.

46. The media continues to report cases of all manner of exploitation of children as a result of trafficking and general vulnerability. Most common forms of exploitation are labour in agriculture and sexual exploitation.

47. The Report of the Law Commission has also recommended the revision of penalties of offences akin to trafficking in persons. These offences are mostly provided for under the Penal Code and include *Section 264* – Wrongful concealing or confining kidnapped or abducted person; *Section 265* – Kidnapping or abducting child under the age of fourteen years with the intention of stealing from such child; *Section 266* - Wrongful confinement of any person; *Section 267* – Buying or disposing of any person as a slave; *Section 268* – Habitual dealing in slaves; *Sections 132, 133 and 134* – rape, punishment and attempted rape; *Section 135* – Abduction; *Section 136* – Abduction of girls under sixteen; *Section 137* – Indecent assault of young girls; *Section 140* - Procuring a woman for sexual exploitation whether within or outside Malawi (misdemeanour) - a prostitute cannot be procured; *Section 141* – Prohibition of procuring for sexual purposes by use of deception and false pretences; *Sections 142, 143 and 147* – Operating a brothel or keeping any premises for purposes of prostitution; *Section 145* – (for men) living off the earnings of prostitution or soliciting for immoral purposes - courts -powers of search and arrest; and *Section 146* – (for women) living off the earnings of prostitution.

48. The special Law Commission considered that while these offences define most of the elements in the offences being proposed under the trafficking in persons regime, they may be committed independently and need to be punished appropriately.

49. Sexual abuse is specifically provided for under sections 132, 133, 134, 137 of the Penal Code.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

50. The Constitution provides for State assistance to children under special circumstances. This has been done through amendments to section 23 made in 2010. The provision requires that state assistance should apply to all children, and emphasis: children with disabilities and other children in situations of disadvantage. The CCPJA has made extensive provision for alternative care for children. There are several forms of alternative care that are recognized as a matter of law or practice in Malawi. The following are the common terms used and practised in this regard:

51. Community based Care as the direct care assumed by the leadership or members of the community in their own homes; Foster Care as the placement of a child in a foster home or with a foster parent; Foster Home means a home approved by the minister for the purposes of foster care placement; Foster Parent means a person who has lawful or legitimate custody, care and control of a child in place of a parent; Place of safety is an appropriate place where a child in need of care and protection can be kept temporarily and includes a safety home or a foster home; Safety home is a place or part thereof for the purposes of reception, education, counselling and safety of children before conclusion of trial or in circumstances requiring placement of a child for care and protection; Reformatory centre is a home or institution or part thereof established for purposes of (a) reception, education and vocational training; and (b) counselling of children in accordance with law; Orphanage is a residential institution devoted to the care of orphans – children whose natural parents are deceased or otherwise unable or unwilling to care for them; Orphan is a person aged 15 years or below who has lost at least one of his or her parents; Kinship care is a private arrangement whereby the child is looked after on an on-going or indefinite basis by relatives or friends."; Special Needs Centre is an institution/ centre that provide the educational requirements of pupils or students suffering from any of a wide range of physical disabilities, medical conditions, intellectual difficulties, or emotional problems, including deafness, blindness, dyslexia, learning difficulties, and behavioural problems; Child headed households is children who choose to live together to the extent that the eldest sibling is willing and capable of acting as the head of the house; Church home is a place under the administration or having originated from a religious association; Transit Care centre is a temporary placement of children awaiting further placement in a short and/or long term care centre.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

52. The Adoption of Children Act was originally enacted in 1949and has largely remained unchanged over the years. Following the celebrated cases of the adoption of David Banda (An Infant) and Chifundo James (An Infant), some concerns were raised as to the responsiveness of legislation to emerging issues in the field of adoption. One of the sticky points during the application for the adoption of Chifundo James was that the High Court threw out the application because the petitioner did not meet the residence requirement under the statute. The Supreme Court of Appeal overturned the lower court's verdict and using the principle of the best interests of the child found in favour of the applicant.

53. Soon thereafter, the Law Commission carried out a comprehensive review, the Adoption of Children Act prompted by the issues which arose in the cerebrated cases of the adoption of David Banda and Chifundo James. The Commission proposed a new law on adoption of children. The Bill is now before Cabinet.

54. The main areas being considered for reform include the Concept of adoption – in terms of purpose and effect; eligibility for adoption; eligibility requirements for prospective adoptive parents; procedural issues in adoption; nature of adoption services – including roles and functions of various players; inter-country adoption; and offences – suppression of improper financial gain; failure to disclose information; unauthorized disclosure of information; advertising; interfering with a child's upbringing; and tampering with documents.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or

accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention

55. Malawi has a Refugees Act which has been in the statute books since 1999. The Refugee Act does not clearly provide for children as refugees inasmuch as it is based on the 1951 Convention relating to the Status of Refugees. Refugee children have access to basic social amenities, provided by Government and its cooperating partners, especially the UNHCR, such as education, hospitals and nutrition. The Constitution, after 2010, made changes which while they do not explicitly refer to refugee children, do provide for children in situations of disadvantage. It is clear that while the Constitution could not cover all instances where children face disadvantage, the status of being a refugee is clearly one and should entitle a child to State assistance and protection in a place which offers safety and security.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

56. The 2010 amendments to the Constitution increased the profile of disability issues in Malawi. Section 13 (g) which lists one of the Principles of National Policy initially made provision for the Disabled. It provided that the State shall actively promote the welfare and development of the people by progressively adopting and implementing policies and legislation aimed at achieving support for the disabled through greater access to public places; fair opportunities in employment; and the fullest possible participation in all spheres of Malawian society. When the amendments were done, the provision read as follows:

"(g) Persons with Disabilities

To enhance the dignity and quality of life of persons with disabilities by providing—

(i) adequate and suitable access to public places;

(ii) fair opportunities in employment; and

(iii) the fullest possible participation in all spheres of Malawian society."

57. The language of provision has changed in order to incorporate the new paradigm towards people with disabilities. Section 23 on the rights of children also has included, with special note, "children with disabilities" as entitled to State assistance and reasonable maintenance.

58. In May, 2012, Malawi passed the Disability Act which provides for equalization of opportunities for persons with disabilities through the promotion and protection of their rights; provides for the establishment of a Disability Trust Fund, among other things.

59. The main areas for equalization of opportunities include health care services; education and training; work and employment; political and public life; cultural, sporting and recreational activities and services; housing; economic empowerment; information and communication technologies; and research. The Trust Fund is established mainly to support the implementation of disability programmes and services. Malawi signed the formally ratified the same on 27th August, 2009.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic

knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

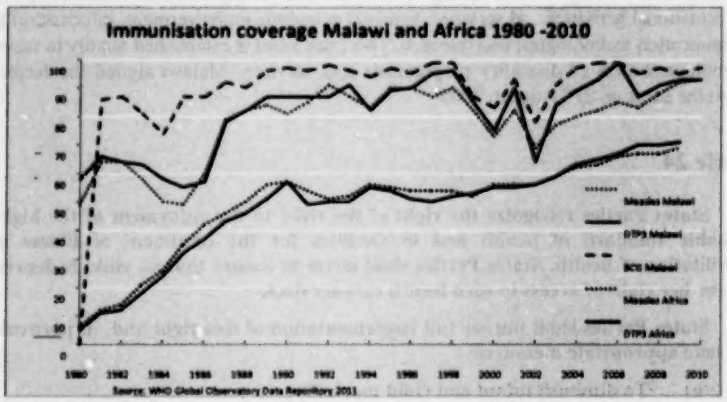
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

60. The Ministry of Health adopted the Health Sector Strategic Plan 2011-2016, with a view to move towards equity and quality in the delivery of health services in Malawi.

61. Malawi has a robust and enviable immunization programme over many years (Figure 1) and recent high coverage is confirmed in the preliminary 2010 DHS report which shows that 81% of children aged 12-23 months were fully immunized. This is an increase in coverage of 26% since the 2004 DHS. However, in 2010 the country experienced an outbreak of measles with an estimated 43,000 children requiring treatment. High coverage, particularly of measles is required to maintain herd immunity and additional resources will therefore be required to sustain a vaccine coverage of 90 per cent and above for all antigens.

Figure 1
Immunisation coverage in Malawi



62. Acute respiratory infections are one of the most significant causes of morbidity and mortality amongst children worldwide. Between 2004 and 2010 the proportion of children with ARIs taken to a health facility for treatment increased from 19.6% to 65.7%. There has also been a reduction of pneumonia case fatality from 18.7% in 2000 to 5.7% in 2008.

63. Evidence has shown that populations, especially children that are heavily exposed to wood smoke from cooking, are at much higher risk from severe pneumonia and at higher risk of mortality.[1]

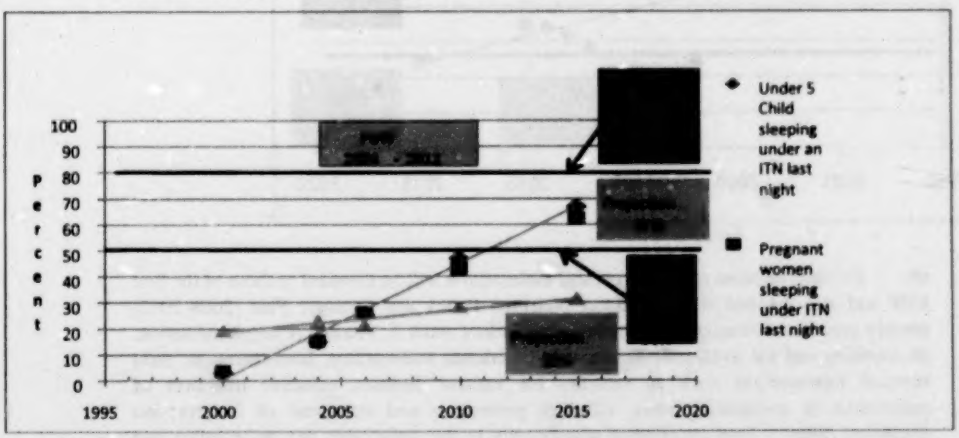
[1] Effect of reduction in household air pollution on childhood pneumonia in Guatemala (RESPIRE): a randomised controlled trial: The Lancet, Volume 378, Issue 9804, 12 November 2011.

64. Prevention though handwashing, immunisations with pneumococcal vaccine, early diagnosis and Treatment with antibiotics is highly effective. Along with malaria and oral rehydration of diarrhoeal disease, it is addressed through an Integrated Management of Childhood Illnesses (IMCI) approach. Successful implementation of pneumonia interventions is likely to have contributed to the dramatic fall in infant and Under 5 mortality. Continuation will help to achieve the two MDGs 2015 targets dealing with child mortality.

65. Malaria is endemic throughout Malawi and continues to be a major public health problem with an estimated 6 million cases occurring annually. It is the leading cause of morbidity and mortality in Under 5 years of age and pregnant women. The use of Insecticide Treated Nets (ITN) when sleeping is the primary control strategy for preventing Malaria. The Malawi National Indicators Survey 2010 Report.[2] Malaria Parasite Prevalence Rate by slide microscopy of 43.3% nationally and severe anaemia prevalence (HB concentration > 8g/dl) was 12.3% >5yrs). Malaria parasite prevalence increased with increasing age whilst severe anaemia showed the opposite trend, both Malaria parasite and severe anaemia prevalence rates were higher among children who did not sleep under an ITN the previous night.

66. The prevalence of severe anaemia in children under 2 years of age who did sleep under an ITN the night before showed 25.7% compared to rate of 13.6% among those who did sleep under a net the previous night. This was found to be higher in the poor wealth quintile. At present 60.4% of pregnant women are reported to have taken 2 or more doses of the recommended Intermittent Preventive Treatment (IPT) as compared to 48% in 2006. Currently coverage of Insecticide Residual Spraying (IRS) is low with poor diagnostic capacity, abuse of ITNs, low coverage of second dose of SP in pregnancy, unavailability of quality ACTs in the private sector, poor adherence to treatment guidelines and policies have affected the implementation of malaria interventions.

Figure 2
Prevention and treatment of Malaria in Malawi

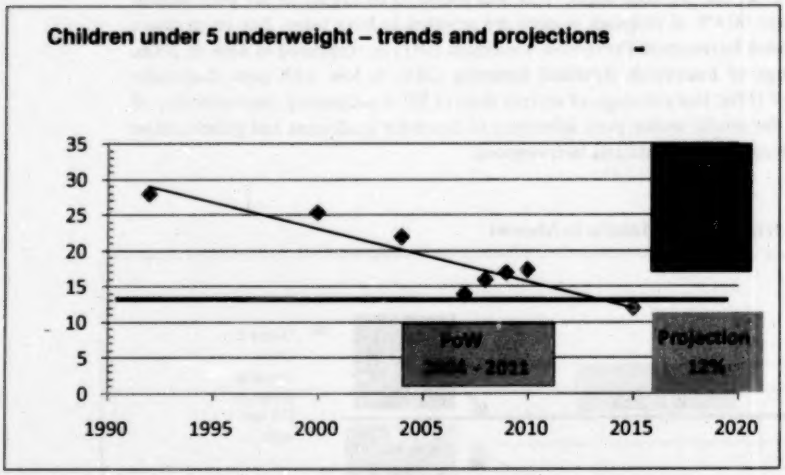


[2] Malawi National Malaria Indicator Survey 2010 NMCP MOH 2010.

67. Dehydration from diarrhoea is one of the major causes of death in young children worldwide. The prevalence of diarrhoea overall is estimated at 17.5% with 38% in children 6-12months, a higher % of reported cases without access to improved drinking water and sanitation , and 60% seeking treatment from a formal health provider and 24.2% of children under 6 months reportedly not receiving any treatment at all.[3] The BoD assessment calculates that the number of episodes of acute diarrhoea in children under 5 years of age is over 13 million per year yet the health service treated only 324,000 in 2010, which suggests only 12% of need is being met. The plan is to increase this by 10% a year for the duration of HSSP through better access to health centres. Reorientation to homemade ORS would reduce the dependence of families on the health sector for what is a common and treatable condition and save money and lives.

68. Although there has been some reduction, malnutrition remains high with 47% of children stunted with 20% severely stunted. The prevalence of diarrhoea and disease outbreaks such as measles have a significant influence on nutritional status, particularly acute malnutrition and have to be taken into account when interpreting nutrition surveillance results. The nutrition-related MDG target is projected to be reached but underweight children and stunting remain high.

Figure 3
Children under 5 underweight – trends and projections



69. The interventions chosen to combat malnutrition will be identical to those of the first EHP and also detailed in the National Nutrition Policy and Strategic Plan (2008-2012) namely growth monitoring and screening for children under 5, Vitamin A supplementation, de-worming and the treatment of severe and moderate malnutrition. Investments in child survival interventions such as vaccines for various diseases, effective treatment of pneumonia at community level, effective prevention and treatment of malaria and diarrhoeal diseases have contributed significantly to the remarkable decline in infant and under 5 mortality rates as can be seen in Figures 4 and 5 below:

[3] Malawi DHS 2010.

Figure 4
Infant Mortality Rates in Malawi

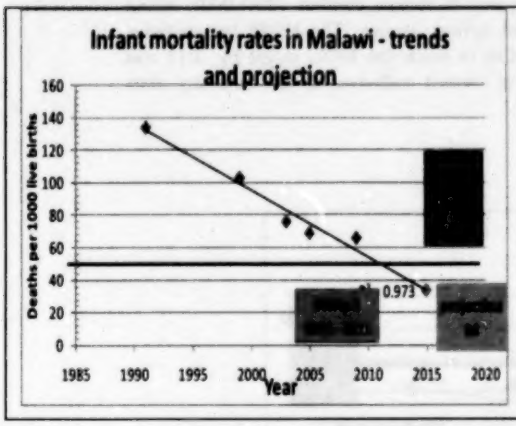
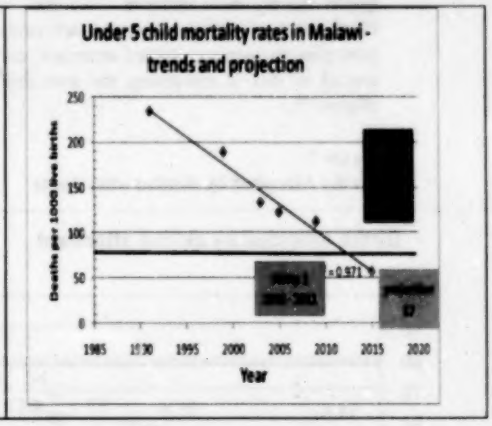


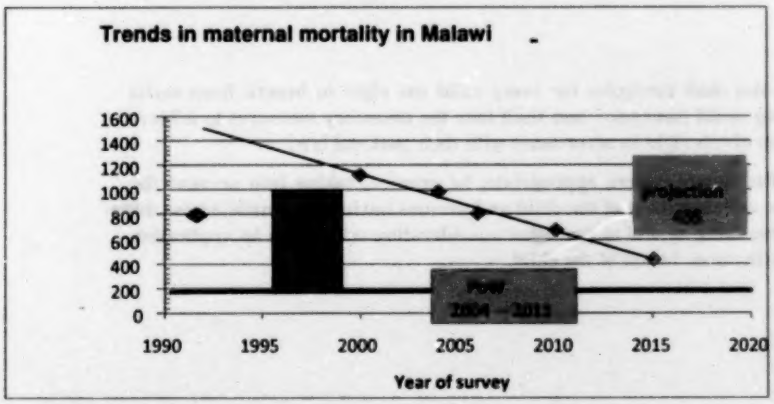
Figure 5
Under five Mortality Rates in Malawi



70. These trends in infant and Under 5 child mortality rate demonstrate that Malawi is on course to reach the MDG targets for these two indicators. This will be possible if significant investments are made in child survival interventions. Maternal mortality rate has decreased from 984/100,000 in 2004 to 675 /100,000 live births in 2010 with an increase in women delivering at health centres from 57.2% in 2004 to 71.5% in 2010. Data from maternal death audits from districts has shown that sepsis and Post *Partum* Haemorrhage were probably the most likely causes of death in the majority of health facility based mortality.

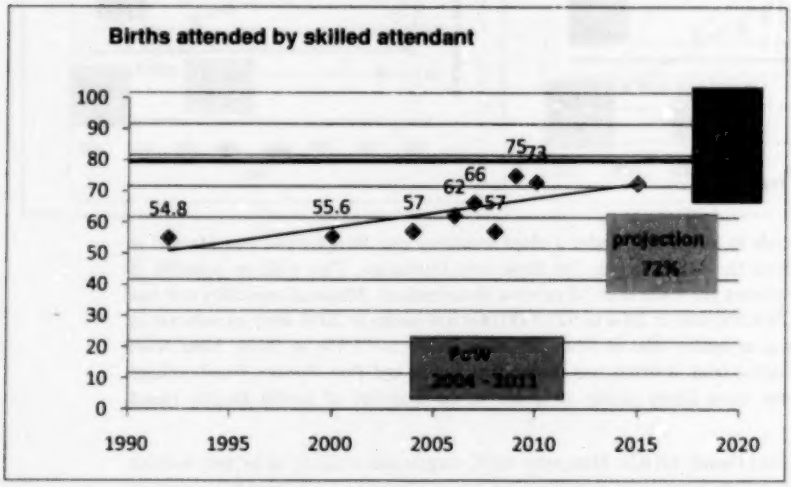
71. Unlike Child Health MDGs, Maternity MDG targets are unlikely to be met without significant additional investment to increase Emergency Obstetric Care (EmOC) access to many more pregnant women (Figure 6) and investment in family planning to reduce Total Fertility rates. Using data from the 2010 EmOC survey it is estimated that only half of the births requiring emergency care are receiving such care. Plans are in place to increase this access from 8% to 15% of births by 2016 by staffing and upgrading existing maternity units. The HSSP intends to increase operative deliveries from 4% now to 10% by 2016.

Figure 6
Trends in maternal mortality in Malawi



72. Currently, the neonatal mortality rate (NMR) is estimated at 33 deaths per 1,000 live births and it is higher in rural areas (34/1,000) compared to urban areas (30/1,000). It is also higher among male children (38/1,000) compared to female children (30/1,000). About 88 per cent of pregnant women are protected against tetanus. The HSSP has included strategies to increase skilled attendant deliveries to reach the MDG target by 2015 and crucial to this is increasing the availability of trained midwives in all maternity units (Figure 7).

Figure 7
Births Attended by Skilled attendants



Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

73. There is no law in Malawi on social security or social insurance. The Constitution, however, provides, under the Principles of National Policy, an obligation on the State to progressively adopt and implement policies and legislation aimed at achieving a sensible balance between the creation and distribution of wealth through the nurturing of a market economy and long term investment in health, education, economic and social development programmes.

74. In 2013, Government adopted the National Social Support Policy (NSSP). The NSSP was developed as a medium term policy with the ultra-poor and vulnerable in mind. The NSSP notes that this group includes the elderly, the chronically sick, orphans and other vulnerable children, persons with disabilities and destitute families. The NSSP is therefore aimed at facilitating implementation of programmes that will provide income or consumption transfers to the poor, protect the vulnerable against livelihood risks and enhance the rights and social status of the marginalized. The four themes of the policy are welfare support; protection of assets; promotion through productivity enhancement; and policy linkages and mainstreaming.

75. At present, Government piloted a Social Cash Transfer scheme for ultra-poor labour-incapacitated households which has benefited households in excess of 1000. The impact of the cash transfers on well-being of the household members, especially on the children, has been significant. General welfare has improved including access to more nutritious food and health services. Currently the pilot project on the scheme is being scaled out to six additional districts to learn lessons on methodology and impact in different geographical settings.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

76. There are several statutes that provide for education. The Constitution guarantees education as a human right and, as a matter of national policy. Progressively, Malawi is expected to provide adequate resources to the education sector and devise programmes in order to eliminate illiteracy in Malawi; make primary education compulsory and free to all citizens of Malawi; offer greater access to higher learning and continuing education; and (iv) promote national goals such as unity and the elimination of political, religious, racial and ethnic intolerance. As a right, the Constitution provides for entitlement to education for

all and spells out primary education as consisting of at least 5 years of education. The Constitution also permits the conditional establishment of private schools and institutions of higher learning.

77. Other than the Constitution, the main legislation are the Education Act; the University of Malawi Act; Mzuzu University Act; and Malawi National Examinations Board Act. The Education Sector divides education into the following categories and priority areas:

(a) Basic education:

(i) Early Childhood Development (ECD);

(ii) Adult literacy;

(iii) Out of school youths; and

(iv) Primary education;

(b) Secondary education;

(c) Teacher education;

(d) Technical and Vocational Training;

(e) Higher Education.

78. ECD is considered as an important pillar in attaining the goals of Education for All. Malawi has 6,277 ECD Centres registered as pre-schools. The attendance in these centres for the targeted pre-school children is at 30% with most concentrated in urban and semi-urban areas.

79. ECD is fraught with a number of challenges which includes lack of a systematic monitoring and evaluation system; poor conditions of ECD centres due to lack of support and poor coordination of stakeholders; lack of integration of special needs in ECD provision; poor advocacy for information on importance of ECD; lack of parental and community involvement in ECD provision; acute shortage of trained teachers in ECD; lack of standard instructional materials; and insufficient public funding towards ECD activities.

80. Government intends to tackle issues of access and equity in ECD provision and further improve quality and relevance of ECD in Malawi. By developing a database for ECD, promoting the profile of ECD and developing ECD legislation, government hopes to improve governance and management issues. It is also hoped that at least 80% of up to 5 years will access ECD by 2017 with an average growth at 17.5%.

81. The increase coverage of ECD services will be based on the current basis of 84% CBCCs, 4% day care centres and 12% pre-schools. Each ECD centre will increase the number of minimum classes from two to three in order to curb underage enrolment and prepare five year olds for entry into standard one (primary education) at an appropriate age of six years. Thus, three classrooms will still be levels 1 and 2 although level 2 will have separate classes for ages 4 and 5 with a relatively modified syllabus/course content. Communities, as Community Based Care Centres (CBCC), will be encouraged to establish ECD centres through grants which will be accessible upon meeting minimum standards. Each education district will have an ECD resource centre to offer the necessary services to CBCCs. By 2018, the average care giver to child ratio will be 1:20 and the helper to child ratio will be 1:40.

82. The Ministry of youth Development and Sports and NGOs are currently at the centre of provision of non-formal basic education targeted at out of school (OOS) youths. OOS youth comprise youths who dropped out of school and those who never attended school at all. The equivalent of the programme is the first 5 years of primary education. The Ministry

of Education has piloted the implementation of Complementary Basic Education in 4 districts in Malawi which aims at providing essential knowledge, skills and values to promote self-reliance, encourage lifelong learning and full participation in societal development.

83. The main challenges in this regard are lack of advocacy on the subject; limited alternative approaches to OOS youth education; absence of a relevant curriculum for out of youth clubs; poor access for children with special needs; and weak linkages among youth clubs and between youth service providers or policy makers.

84. In order to curb these challenges, Government plans to increase access to OOS through Interactive Radio Instructions (IRI), Complementary Basic Education (CBE) and open and distance learning. Government shall also integrate community based rehabilitation programmes run with special needs components; and provide alternative forms of education such as IRI and CBE. By developing a relevant curriculum and improving service delivery, Government hopes to deal with issues of quality and relevance. Government also intends to improve governance and management of OOS youth education by strengthening dialogue among youth clubs and between the youth service providers or policy makers. Government established 15 learning centres in 3 districts of Ntchisi, Chikhwawa and Lilongwe Rural in the 2007/08 school year. It intends to increase the number to 500 annually with a target of an increase of 600 centres from 2012/13 school year.

85. In terms of Primary education as the longest existing structure under basic education, Government encounters many challenges. The following challenges are among the major ones: shortage of qualified primary school teachers; poor strategic management of teachers; inadequate and inferior physical infrastructure; inadequate teaching and learning materials; poor monitoring and supervisory systems; poor access for children with special needs; poor retention of girls mainly from standards five to eight; negative impact of HIV/AIDS; and poor participation of school committees and their communities in school management (MGDS 2006:50).

86. In response to the challenges, Malawi is implementing a priority, fast-track programme to strengthen primary education, which will be the base for all other education developments. The programme combines policy measures, quality improvement and investments, through three sets of strategies listed below. Through policy and other measures, Malawi plans to give all children a quality primary education.

87. Government shall mobilise communities to participate in "whole-school development" and management for both normal and special needs pupils. It shall also ensure appropriate decentralisation of delivery of education services which incorporates processes of planning, budgeting and financing, and monitoring and evaluation (M&E) while introducing policy measures to reduce the size of classes in Standards 1 and 2. There is a plan to reduce repetition, drop-out and enrolment of over- and under-age children, and to encourage promotion between standards, reinforce HIV and AIDS awareness, girls empowerment, safe schools (child friendly schools); and monitor performance and strengthen internal efficiency of sub-sector.

88. In addition to the fast-track programme, the following guiding principles are critical for the envisaged positive change in primary education between 2008 and 2018:

(a) Ratio of pupils to teachers progressing to a 1:60 ratio by 2013/14 and below 1:60 ratio by 2017/18;

(b) Percentage of teachers eligible for hardship fund increasing from 15% in 2008/09 to 30% by 2014/15 and staying at 30% thereafter;

(c) Transfer of teachers transferred from CDSSs to primary schools starts with 300 in 2008/09 and thereafter 200 teachers;

(d) Using Distance Education Teacher Trainees as a measure of reducing the pupil to teacher ratio to 1:60 by 2013/14. Starting with 4,000 temporary (voluntary) teachers in 2008/09;

(e) Replenishment of textbooks for additional pupils in each Standard at the beginning of the plan and thereafter replenishment of textbooks every three years;

(f) Giving 3 exercise books per subject per child for all standards, 1 slate per child in Standard 1, 3 pencils per child in a year for all children in Standards 1-4 and 3 pens per child in a year for all children in Standards 5-8;

(g) The Primary Curriculum Assessment Review (PCAR) curriculum rolled out to all Standards by 2009/10 and taking into account special needs;

(h) The Interactive Radio Instruction (IRI) programme rolled out to all schools starting with Standard 1 in 2007/08 and being completely rolled out to all Standards by 2014/15;

(i) The Interactive Video Learning (IVL) programme rolled out to 50 schools in 2007/08 and increased to 50 more schools for each year;

(j) Increasing the number of classrooms operating as double shift from 15.2% of the total in 2007/08, peaking at 20% in 2012/13 and ending with 15% in 2017/18;

(k) The number of schools constructed will increase by 50 every year;

(l) Number of classrooms to be constructed being 2,930 in 2007/08 and being reduced to 400 by 2017/18;

(m) Provision of grants to communities to erect standard classroom shelters in difficult areas where it will not be possible to immediately build classrooms and follow up in later years to build the classrooms – more information to follow;

(n) Teachers houses – 1,000 constructed every year from 2008/09 until the end of the NESP period in 2017/18;

(o) Grants to schools for the support of orphans. Starting with the support of 20% of schools in 2009/10 to 100% of schools by 2013/14;

(p) Support to girls in isolated areas for Standards 6, 7 and 8 in term s of monetary incentives starting in 2009/10;

(q) Establishment of mother groups in all schools to support girl education in primary schools by 2017/18;

(r) School feeding programmes to benefit 635,000 children from 2008/09 onwards;

(s) School Health and Nutrition, including HIV/AIDS programmes, to be provided to all school children in public primary schools;

(t) xx. Communities will be strengthened through monetary support and training throughout NESP period through the continued roll-out of the National Strategy for Community Participation; and

(u) Direct grants to enable school based improvement planning and management thereby reinforcing decentralization.

89. For secondary education, Government encounters the following challenges:

(a) Inadequate access to secondary education with emphasis on special needs students, orphans and needy ones;

(b) Inadequate supply of qualified teachers, especially in Community Day Secondary Schools;

(c) Inadequate basic infrastructure and teaching and learning materials;

(d) Low funding to the secondary sub-sector, especially CDSS receiving less resources than government and grant secondary schools;

(e) Poor retention especially for girls due to long distance to school and unfavourable gender environment among others;

(f) Partial implementation of the curriculum which in turn affects negatively public examination administration and results;

(g) Poor learning achievement with only around 50% of students passing end-of-cycle examinations,

(h) Inefficient use of existing resources such as infrastructure, time and staff;

(i) Negative impact of HIV/AIDS on teachers and students; and

(j) Lack of financial prudence, management and information systems thereby compromising standards.

90. In response to these challenges, Government intends to increase secondary school enrolment and mainly girls' participation to at least 50%; attain improved throughput at Malawi School certificate of Education (O level) level from the current 38.6% in 2006 to at least 65%. Government sees teaching staff to student increased in community day Secondary Schools from 1:104 to 1:60. Overhead costs of secondary education shall also be reduced as a result of increased enrolment and reduced boarding subsidy.

91. For teacher education both at primary and secondary school level, Government shall increase the supply of teachers with a bias towards increased female throughput for both primary and secondary schools by at least 35% and mainstream special needs education in at least half of the teacher training colleges. Government shall also institutionalize In-Service Training (INSET)/Continuous Professional Development for Teachers in the education system and increase and rationalize use of teaching staff.

92. On Technical and Vocational Training, increased enrolment with a bias towards increasing the intake of females in non-traditional areas, reduction of overhead costs of running colleges, and rationalization of teaching staff in line with relevant training requirements remain a priority.

93. In Higher Education, Government intends to double enrolment, reduce overhead costs from 185 US dollars to 65 US dollars or below and increase and rationalize staffing levels with appropriate qualification from 20% to 75%.

94. The above undertakings shall be implemented under the Medium Term Expenditure Framework where Government will facilitate the implementation through formulation of the priority areas into programmes; monitor and evaluate the progress periodically; determine outcome indicators; assist districts to develop plans; and establish a development programme which will take care of capacity development.

95. Between the years 2007 and 2012, government projected growth in costs of the total annual public education programmes from 2007 and 2012 at 80%. The increase amount was pegged at MK23.7 billion, half of which was targeted towards recurrent spending which the remainder was slated for investment spending.

96. The 80% increase was attributed to building of new schools; new and rehabilitated classrooms and other facilities in existing schools; making grants for shelters for communities waiting for construction of classrooms; teaching staff accommodation in rural areas; teacher education; investment programmes for administration and other institutions; and university investment funding in recurrent grants under the operational budget.

97. The Basic Indicators for education include literate rates for the youth; pre-primary school participation; primary school participation; and secondary school participation. See Table below:

Figure 8
Basic Education Indicators

Basic Indicators	
Youth (15-24 years) literacy rate (%) 2007-2011*, male	87
Youth (15-24 years) literacy rate (%) 2007-2011*, female	87
Number per 100 population 2011, mobile phones	25
Number per 100 population 2011, Internet users	3
Pre-primary school participation, Gross enrolment ratio (%) 2008 -2011*, male	-
Pre-primary school participation, Gross enrolment ratio (%) 2008 -2011*, female	-
Primary school participation, Gross enrolment ratio (%) 2008-2011*, male	133
Primary school participation, Gross enrolment ratio (%) 2008-2011*, female	138
Primary school participation, Net enrolment ratio (%) 2008-2011*, male	-
Primary school participation, Net enrolment ratio (%) 2008-2011*, female	-
Primary school participation, Net attendance ratio (%) 2007-2011*, male	76
Primary school participation, Net attendance ratio (%) 2007-2011*, female	79
Primary school participation, Survival rate to last primary grade (%) , 2008-2011*, admin. data	53
Primary school participation, Survival rate to last primary grade (%) , 2007-2011*, survey data	81
Secondary school participation, Net enrolment ratio (%) 2008-2011*, male	28
Secondary school participation, Net enrolment ratio (%) 2008-2011*, female	27
Secondary school participation, Net attendance ratio (%) 2007-2011*, male	19
Secondary school participation, Net attendance ratio (%) 2007-2011*, female	20

Source: http://www.unicef.org/infobycountry/malawi_statistics.html#103 (Accessed on 25 June, 2013.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

98. Malawi has divisions between ethnic, religious and linguistic groups. The largest ethnic group in Malawi is Chewa while the dominant religious group is Christian. Chewa is the most popular language and the *lingua franca* for social and commercial interaction. Other significant religions include Hinduism; Baha'i Faith; and Traditional Religions. Christianity and Islam, the major religions, are not homogenous and support various divisions. For Christianity, the main groups are Roman Catholics; Presbyterians; Anglicans; Adventists; Pentecostals; and Apostolic churches; while for Muslims, the main groups are Quadria; Sunni; and Sukut. The Table below shows the breakdown of Malawi's population by religion indicating only Malawi's major religions are Christianity and Islam.

Figure 9

	Total	*Christian*	*Muslim*	*Other*	*None*
Malawi	**13 029 498**	**10 770 229**	**1 690 087**	**242 503**	**326 679**
Urban	1 946 637	1 680 834	234 261	17 408	14 134
Rural	11 082 861	9 089 395	1 455 826	225 095	312 545
Male	**6 370 935**	**5 213 900**	**821 139**	**120 930**	**214 966**
Urban	986 845	845 237	122 277	9 126	10 205
Rural	5 384 090	4 368 663	698 862	111 804	204 761
Female	**6 658 563**	**5 556 329**	**868 948**	**121 573**	**111 713**
Urban	959 792	835 597	111 984	8 282	3 929
Rural	5 698 771	4 720 732	756 964	113 291	107 784

Source: National Statistics Office 2008.

99. The divisions notwithstanding, and the protection of culture and religion in the Constitution, there has relatively been little conflict between ethnic or religious groups to report on. The main contention in the enjoyment of the right to religion arises with respect to public health. There are a number of religious groups, minority in nature, which oppose some public health interventions like vaccinations and medication. The media has reported cases of such problems including instances where such members have been vaccinated at gun point or they have abandoned children who have been treated or vaccinated. The Constitution makes the right to religion non-restrictable, non-derogable and non-limitable even in instances of public emergency.

100. The CCPJA has identified a number of practices as undesirable. These include abduction, trafficking, forced marriage and betrothal, pledging children as security and other harmful cultural practices. These practices are punishable by prison terms ranging from 10 years to life imprisonment. As such, although the participation in cultural, traditional or customary practices is enshrined by the Constitution, the restrictions on practices which are harmful to children is provided for by law and is admittedly a limitation, albeit a legal one, on the enjoyment of cultural and social rights.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

101. Under the Guiding Principles in Matters Concerning Children, which is a Schedule under the CCPJA, a child is entitled to leisure which is not morally harmful. A child also has the right to participate in sports and positive cultural and artistic activities.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

102. The Constitution protects children from economic exploitation or any treatment, work or punishment that is, or is likely to be hazardous; interfere with their education; or be harmful to their health or to their physical, mental or spiritual or social development. Among the duties imposed on a parent or guardian is the duty to protect the child from exploitation. A child is listed as in need of care and protection if the child is sexually abused or engages in an activity which is sexual in nature for purposes of sexual exploitation for gratification or commercial gain. The CCPJA also criminalizes child trafficking by prohibiting taking part in any transaction the object or one of the objects of which is child trafficking. Under the CCPJA, child trafficking means the recruitment, transaction, transfer, harbouring or receipt of a child for the purposes of exploitation.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

103. The Dangerous Drugs Act and the Liquor Act are the key instruments against alcohol, drug and substance abuse. These statutes have not changed since the last report. However, in light of the enactment of the CCPJA which defines a child as a person below the age of 16 years, it is imperative that the statutes be revised in order to offer protection to the child not by changing the age of exposure but rather including the emerging substances that may be abused by children.

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular,

taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

104. The Constitution still provides for protection from torture, cruel, inhuman or degrading treatment for all persons. The same protection from arbitrary deprivation of liberty still stands.

105. The procedure regarding detention of children is provided for under the CCPJA. In addition to provisions on Criminal Procedure and Evidence Code and in order to actualize the overarching principle, the CCPJA provides for guidelines when arresting a child in conflict with the law. At the time of arrest of a child, the arresting officer shall not use physical abuse or harassment nor use handcuffs. A child in detention shall be separated from adults and if possible, the child shall be arrested in the company of parents or guardians, if possible, if not, an appropriate adult. If the parents or guardians are not available, they shall be informed, as soon as possible, where possible. In serious offences, legal representation should be provided.

106. As soon as a child is arrested, he or she shall be referred to a probation officer for age estimation. Age determination must be done at a preliminary inquiry based on the available evidence, if the age is not known. Comprehensive provisions on age determination are contained in the CCPJA in order to ascertain the age of the offender for purposes of determining criminal responsibility and the application of the law. The age of criminal responsibility provided for under the Penal Code as 10 years.

107. A process of diverting a child offender away from the normal criminal justice system procedures has been provided for under the CCPJA. The philosophy behind Diversion is that the effects of subjecting a child offender to a fully-fledged criminal justice system are far more detrimental than diverting the offender from the system. Other

comprehensive provisions and structures have been adopted e.g. Child panels. However, the CCPJA provides that not all cases can be diverted as only minor cases can be diverted. Diversion programmes have been provided for under the CCPJA and a separate court system, the Child Justice Courts have been established.

108. Systematic provisions on legal representation including representation at state expense have been provided for under the CCPJA. In terms of court procedure, proceedings shall be held *in camera* and shall be informal in nature. No jury trial shall be held against a child unless it is necessary and to do so is in the best interests of the child.

109. For purposes of detention, the CCPJA has provided for special places for children on remand. The places are being referred to as Safety Homes. After trial, a child cannot be imprisoned and children against whom a finding of responsibility has been made shall be placed in in Reformatory Centres. The detention centres whether Safety Homes or Reformatory Centres shall be regularly inspected. The detention centres shall contain and provide facilities for the children so detained.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

110. There has been no armed conflict in Malawi since independence in 1964 and as such, the applicability of this provision has not arisen. However, since independence Malawi has always had a standing Army now termed the Malawi Defence Force. Under section 19(2) of the Defence Force Act, a Recruiting Officer shall not enlist a person under the age of 18 years. This means that all persons covered under the Constitution and the CCPJA cannot be employed under the Defence Force.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

111. The most comprehensive provision for child recovery is under the CCPJA. The CCPJA provides that a child in need of care and protection may be taken into temporary custody or a place of safety by a Police Officer, Social Welfare Officer, a Chief or any

member of the commur ity. The preceding provision provides for the criteria for determining whether a child is need of care and protection. The criteria include substantial risk of injury or abuse; actual injury; unfitness of parent or guardian; neglect; absence of or abandonment by parent or guardian; being in custody of a person who has been convicted of a n offence in connection with the child; child frequents the company of immoral, vicious or undesirable persons; being allowed to be on the street; or being assessed as being in need of care and protection by a Social Welfare Officer.

112. A child taken into temporary custody or to a place of safety must be brought before a Child Justice Court within 48 hours for the court to direct whether the child should be placed in a place of safety or under the care of a fit and proper person until such time as the child is brought before a Child Justice Court.

113. The CCPJA also provides that the child in need for care and protection should be taken for medical examination to determine whether the child needs medical services and care and may be hospitalized if necessary.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State party; or

(b) International law in force for that State.

114. The State Party has entered into more agreements than the CRC to cater for child protection. The African Charter on Rights on Women and Children (ACRWC) is the major regional instrument which Malawi has ratified in order to realize even greater protection of children.

115. In keeping with the obligations of Malawi under the ACRWC, which provides for responsibilities of the child, the CCPJA has made provision for the duties and responsibilities of the child to respect the parents, guardians, superiors and elders at all times and depending on the age of the child assist them in cases of need; serve the community by placing his or her physical and intellectual abilities at its service; preserve and strengthen social and national unity and character of Malawi; uphold the positive values of the community; and contribute towards the child's own development into being a useful member of the society. However, due regard shall be paid to the age and ability of the child and to such limitations as are contained in the CCPJA.

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

116. The convention has been implemented through the Constitution, legislation and policies. In that regard the provisions and principles of the Convention are well known. The Government through the Ministry responsible for children continuously engages in civil education programmes to ensure that issues related to rights of children as provided for in the Convention are well known and implemented.

United Nations CRC/C/MWI/Q/3-5

Convention on the Rights of the Child

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Item 4 of the provisional agenda
Consideration of reports of States parties

List of issues in relation to the third to fifth periodic reports of Malawi

The State party is requested to submit in writing additional updated information (10,700 words maximum), if possible before 15 October 2016. The Committee may take up all aspects of children's rights set out in the Convention during the dialogue with the State party.

Part I

1. Please provide any update on the constitutional review process for the protection of children, the measures taken to harmonize national legislation with the Convention and the steps taken to further develop and implement the comprehensive policy on children.

2. Please provide information on the measures taken to establish a comprehensive system of data collection for all of the areas covered by the Convention. Please also provide updated information on the national mechanism that is mandated to coordinate the implementation and evaluation of activities performed under the Convention.

3. Please provide information on the steps taken to improve the efficiency of resource usage, prevent corruption and strengthen the public financial management system.

4. Please provide the Committee with information on the measures taken to strengthen the monitoring role of and resources available to the Malawi Human Rights Commission.

5. Please provide updated information on the establishment of the National Registration System and the steps taken to scale up health facility-based birth registration, the use of mobile registration structures and awareness-raising activities on the existence of the National Registration Act.

6. Please provide information on:

(a) The measures taken to prohibit explicitly all forms of violence against children, including corporal punishment, in all settings, and strengthen education on

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alternative methods of discipline, and on any intention to establish a coordination mechanism to respond to violence against children;

(b) The measures taken to address police violence against children.

7. Please provide detailed and updated information on the measures taken to prevent and protect children from sexual abuse and exploitation, including to;

(a) Make one-stop centres more available;

(b) Prohibit the practice of traditional ceremonies for girls;

(c) Receive and actively investigate complaints, ensure that those found guilty of such acts are prosecuted, and ensure that victims are afforded effective remedies.

8. Please inform the Committee as to the steps taken to implement the Alternative Care Guidelines. Please explain the measures in place to accredit and regularly monitor alternative care institutions. Please provide information on mothers in prison with children.

9. Please inform the Committee as to the measures taken to effectively implement the Disability Act and the national action plan, including the Disability Trust Fund, to provide inclusive and early education, social protection and health care to children with disabilities and protect them from discrimination, including in the family.

10. Please provide information on the steps taken to protect children with albinism from all forms of discrimination.

11. Please inform the Committee as to the steps taken to address chronic malnutrition, stunting, child mortality due to malaria, neonatal conditions and preventable diseases; address the shortage of drugs and medical supplies; enact the HIV/AIDS bill; prevent sexually transmitted diseases, in particular among girls; address the high rate of teenage pregnancies; and ensure access to sexual and reproductive health services.

12. Please inform the Committee as to the measures taken to spend efficiently the resources allocated to the education sector to avoid the hidden cost of education; recruit newly qualified teachers; address the high number of dropouts, particularly among girls, and the sexual abuse of children by teachers; simplify the re-admission process for young mothers; and make schools accessible to children with disabilities.

13. Please provide information on the measures taken to ensure that unaccompanied migrant children are kept in safe homes in conditions that meet their special needs. Please also provide information about the 43 unaccompanied Ethiopian migrant children detained at Kachere Juvenile Prison.

14. Please provide information on children under 15 engaged in labour.

15. Please provide information on the measures taken to upgrade the juvenile justice system in law and practice, in line with internationally accepted standards, especially with reference to the age of criminal responsibility.

Part II

16. The Committee invites the State party to provide a brief update (no more than three pages) on the information presented in its report with regard to:

(a) New bills or laws, and their respective regulations;

(b) New institutions and their mandates, and institutional reforms;

(c) Recently introduced policies, programmes and action plans and their scope and financing;

(d) Recent ratifications of human rights instruments.

Part III

Data, statistics and other information, if available

17. Please provide consolidated information for the past three years on the budget lines regarding children and social sectors by indicating the percentage of each budget line in terms of the total national budget and the gross national product. Please also provide information on the geographic allocation of those resources. Please also provide information on the measures taken to ensure that the authorities are guided by the principle of the best interests of the child in their budgetary decisions.

18. Please provide, if available, updated statistical data, disaggregated by age, sex, ethnic origin, national origin, geographic location and socioeconomic status, for the past three years, on the number of children engaged in child labour in the informal economy, breaking the information down by type of work, including hazardous work.

19. Please provide, if available, updated statistical data disaggregated by age, sex, ethnic origin, national origin, geographic location and socioeconomic status, for the past three years, on the number and/or rates of:

(a) Children separated from their parents;

(b) Children living in child-headed households;

(c) Children placed in institutions and with foster families;

(d) Children adopted domestically or through intercountry adoptions;

(e) Children who have benefited from the government welfare system;

(f) Allocation of resources to the primary health-care system;

(g) Infant mortality and child mortality;

(h) Teenage pregnancy and girls receiving medical and professional services for pregnancy and childbirth;

(i) Abortions;

(j) Sexually transmitted infections, including HIV/AIDS;

(k) Enrolment and completion rates, in percentages, of the relevant age groups in pre-primary schools, primary schools and secondary schools;

(l) Dropouts and repetitions.

20. Please provide, if available, updated statistical data, disaggregated by age, sex, socioeconomic background and national origin, for the past three years, on the number and/or rates of migrant children in detention settings, including juvenile and adult detention centres, and in police custody, and information on how long children are held in police custody, with reference both to those children in need of care and protection and those in conflict with the law.

21. Please provide data, disaggregated by age, sex, type of disability, ethnic origin and geographical location, for the past three years, on the number of children with disabilities:

(a) Living with their families;

(b) Living in institutions;

(c) Attending regular primary schools;

(d) Attending regular secondary schools;

(e) Attending special schools;

(f) Not attending school;

(g) Abandoned by their families.

22. Please provide the Committee with an update of any data in the report that may have been outdated by more recent data collected or other new developments.

23. In addition, the State party may list areas affecting children that it considers to be of priority with regard to the implementation of the Convention.